

§ 58-28-14. Monetary penalty; factors to be considered.

In determining the amount of the penalty under G.S. 58-28-13, the Commissioner shall consider:

- (1) The amount of money that inured to the benefit of the violator as a result of the violation,
- (2) Whether the violation was committed willfully.
- (3) The prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator.
- (4) The failure of the violator to provide timely and complete responses to the Department's inquiries about the violator's insurance activities in North Carolina.
- (5) The extent and degree to which the violator marketed its insurance product in this State.
- (6) The extent to which the violator's marketing materials, including fax solicitations, Internet Web sites, circulars, or other forms of advertisement or solicitations through any medium, were deceptive or misleading to residents of this State.
- (7) The number of residents of this State who enrolled in the violator's insurance plan.
- (8) The number of policies and amount of insurance coverage issued by the violator to residents of this State.
- (9) The failure of the violator to promptly refund premiums and other consideration paid by residents of this State for insurance coverage issued by the violator upon requests by the residents of this State or the Department.
- (10) The extent and degree of harm to residents of this State. In assessing the extent and degree of harm, the Commissioner shall consider, among other things, the amount of premiums and other consideration paid by residents of this State for coverage issued by the violator, the failure of the violator to pay claims made by residents of this State, and number and dollar amount of claims made by residents of this State that the violator has failed to pay.
- (11) Whether the violator has a prior record of violating this Article or the unauthorized insurance laws of any other state. "Prior record" includes final administrative orders issued by the Commissioner or insurance regulator of any other state; federal or state criminal convictions, including pleas of guilty or nolo contendere; civil judgments; and written settlement agreements of state administrative proceedings, state or federal criminal proceedings, or civil lawsuits against the violator or any entity of which the violator was either a principal or owner. (2008-124, s. 3.4.)